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4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

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7 IN RE: WAL-MART WAGE AND HOUR ) MDL 1735  
8 EMPLOYMENT PRACTICES ) 2:06-CV-00225-PMP-PAL  
9 LITIGATION. )  
10 AND ALL RELATED CASES. ) O R D E R  
11 \_\_\_\_\_)

12 Presently before the Court is the Notice of Allocation Order and Request for  
13 Court Order Instructing Claims Administrator to Release Payment of Attorneys' Fees to  
14 Plaintiffs' Class Counsels (Doc. #722), filed on January 26, 2011. Carolyn Beasley Burton  
15 and Robert W. Mills of the Mills Law Firm, and Carol P. LaPlant filed an Opposition (Doc.  
16 #725) on January 27, 2011. Robert Bonsignore filed a Reply (Doc. #730) on January 30,  
17 2011. Robert Bonsignore also filed a motion to strike the Opposition (Doc. #731), and an  
18 ex parte motion to file the arbitrator's award under seal (Doc. #732), on January 31, 2011.  
19 Carolyn Beasley Burton, Robert Mills, and Carol LaPlant filed an opposition to the motion  
20 to strike (Doc. #733) on February 17, 2011. Robert Bonsignore filed a reply (Doc. #734) on  
21 February 28, 2011. Robert Bonsignore also filed a motion for a hearing on the above filings  
(Doc. #735) on March 11, 2011.

22 The Court will deny the Notice of Allocation Order and Request for Court Order  
23 Instructing Claims Administrator to Release Payment of Attorneys' Fees to Plaintiffs' Class  
24 Counsels ("Notice") to the extent it requests an immediate distribution of attorneys' fees  
25 from the Qualified Settlement Fund ("QSF") pursuant to the arbitration award. Such an  
26 immediate release of funds would violate the Settlement Agreement. Section 8.12.2 of the

1 Settlement Agreement provides:

2 No funds transferred to the QSF for purposes of Attorneys' Fees and  
3 Costs shall be transferred out of the QSF until the Court has approved  
an allocation plan to be submitted by Class Counsel with respect to the  
allocation of the Attorneys' Fees and Costs awarded by the Court.  
4 Absent any appeal by Class Counsel in accordance with Section 15.2,  
the QSF shall release such funds in accordance with such allocation  
5 plan within ten (10) days after the Settlement Effective Date or within  
ten (10) days after the date upon which the time to appeal the Court's  
6 approval of such allocation plan has expired, whichever is later. If  
7 Class Counsel takes an appeal in accordance with Section 15.2, the  
QSF shall not transfer any funds for purposes of paying Attorneys'  
8 Fees and Costs until such appeal is fully and finally resolved such that  
all further rights of appeal have been exhausted.

9 Section 15.2 provides:

10 In the event that the Court does not approve the Attorneys' Fees and  
11 Costs in the amount requested by Class Counsel, or in the event that  
the Attorneys' Fees and Costs requested by Class Counsel is reduced,  
12 that finding shall not be a basis for rendering any unrelated section of  
Settlement null, void, or unenforceable. Class Counsel retain their  
right to appeal any decision by the Court regarding the Attorneys' Fees  
13 and Costs and such appeal shall not be deemed an appeal of the  
Settlement. The merits and substance of the Settlement shall be  
14 approved by the court separately and independently of the court's  
decisions regarding Class Counsel's application for Attorneys' Fees  
15 and Costs.

16 Finally, Section 22.9 provides:

17 Class counsel agree on behalf of themselves, their clients, and all Class  
18 Counsel to submit any disputes concerning fees (including, but not  
limited to, disputes concerning the fee allocation to any Class Counsel  
19 as recommended by Co-Lead Counsel, and disputes between Co-Lead  
Counsel regarding the determination of appropriate fee allocations) to  
binding, non-appealable arbitration to the Honorable Layn Phillips  
20 within fourteen (14) days of the fee allocations set forth by and/or  
recommended by Co-Lead Counsel. Unless otherwise ordered by  
Judge Phillips, the (Class Counsel) parties to any fee dispute will split  
21 the cost of the arbitration and each party to any such dispute will bear  
its own attorneys' fees and expenses.

22 Pursuant to Section 8.12.2, the QSF administrator is not permitted to release any funds until  
23 the Court, not the arbitrator, approves an allocation plan. The Court has not done so yet,  
24 and consequently no funds may be distributed at this time. Section 8.12.2 specifically refers  
25 to releasing funds in the QSF "within ten (10) days after the date upon which the time to  
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1 appeal the Court’s approval of such allocation plan has expired . . . .” Section 8.12.2 thus  
 2 refers to the possibility that Class Counsel may appeal the Court’s approval of an allocation  
 3 plan. Section 15.2 provides that Class Counsel retain the right to appeal “any” decision by  
 4 the Court regarding attorneys’ fees and costs. Under the Settlement Agreement, any  
 5 distribution therefore cannot occur until the Court approves an allocation plan, and the time  
 6 for appeal either runs out or any appeal filed is completed.

7       Although the Court will not grant immediate distribution of the funds based on  
 8 the Notice, the Court will treat the Notice as a motion to confirm the arbitration award  
 9 issued by the arbitrator in January 2011. The Notice was not denominated as a motion to  
 10 confirm the award, and made no reference to the Federal Arbitration Act (“FAA”).  
 11 Nevertheless, co-lead class counsel Robert Bonsignore (“Bonsignore”) now requests the  
 12 Court to treat the Notice as a motion to confirm the award. The Court therefore will order  
 13 any party opposing confirmation of the award to file an opposition no later than April 11,  
 14 2011. Such opposition must include any grounds for vacating the award under FAA §§ 10-  
 15 11.<sup>1</sup> Any party supporting confirmation of the award must file a reply no later than April  
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17       <sup>1</sup> Although Section 22.9 of the Settlement Agreement refers to “binding, non-appealable  
 18 arbitration,” courts have interpreted similar language to mean that the merits are not subject to court  
 19 review, but that parties do not give up their right to appeal the arbitrator’s decision for any of the  
 20 reasons set forth in FAA §§ 10-11, such as fraud, corruption, or partiality of the arbitrator. See Dean  
v. Sullivan, 118 F.3d 1170, 1171 (7th Cir. 1997) (“That the arbitration was final and binding does not  
 21 mean that federal courts will enforce the decision in every case.”); Tabas v. Tabas, 47 F.3d 1280, 1288  
 22 (3d Cir. 1995); Aerojet-General Corp. v. Am. Arbitration Ass’n, 478 F.2d 248, 252 (9th Cir. 1973)  
 23 (“Ordinary language to the effect that the decisions of the arbitrator shall be ‘final and binding’ has  
 24 been held not to preclude some judicial review.”); Goodall-Sanford, Inc. v. United Textile Workers,  
 233 F.2d 104 (1st Cir. 1956) (stating that “[f]inality is a mirage if relied upon to preclude any judicial  
 25 review of an arbitration award” (quotation omitted)); Team Scandia, Inc. v. Greco, 6 F. Supp. 2d 795,  
 798 (S.D. Ind. 1998) (stating that “an agreement to a ‘final,’ ‘binding,’ and ‘non-appealable arbitration  
 26 award does not prohibit appeals based upon the arbitrator’s abuse of authority or bias’”). Courts take  
 this stance largely because it is “presumed that the parties intended to relinquish their right to appeal  
 the merits of the dispute, not their right to appeal an arbitration award that resulted from the arbitrator’s  
 abuse of authority or bias.” Team Scandia, Inc., 6 F. Supp. 2d at 798.

1 26, 2011.

2       Although the Court has not approved an allocation plan for attorneys' fees, the  
3 Court previously approved an allocation plan for costs on December 16, 2009 (Doc. #533),  
4 which no one has appealed. The Court therefore directs that the QSF administrator that it  
5 may distribute funds consistent with the allocation plan for costs as set forth in the Court's  
6 December 16, 2009 Order (Doc. #533) allocating costs to class counsel.

7       The Court will deny Bonsignore's motion to strike the opposition to the Notice,  
8 and his motion for a hearing. The Court also will deny Bonsignore's motion to file the  
9 arbitrator's award under seal. See Kamakana v. City & County of Honolulu, 447 F.3d  
10 1172, 1178-79 (9th Cir. 2006) ("A party seeking to seal a judicial record . . . must  
11 articulate[ ] compelling reasons supported by specific factual findings that outweigh the  
12 general history of access and the public policies favoring disclosure, such as the public  
13 interest in understanding the judicial process." (quotation and internal citations omitted)).

14       IT IS THEREFORE ORDERED that the Notice of Allocation Order and Request  
15 for Court Order Instructing Claims Administrator to Release Payment of Attorneys' Fees to  
16 Plaintiffs' Class Counsels (Doc. #722) is hereby DENIED to the extent it seeks an  
17 immediate distribution of funds from the Qualified Settlement Fund.

18       IT IS FURTHER ORDERED that the Court will treat the Notice of Allocation  
19 Order and Request for Court Order Instructing Claims Administrator to Release Payment of  
20 Attorneys' Fees to Plaintiffs' Class Counsels (Doc. #722) as a motion to confirm the  
21 arbitration award.

22       IT IS FURTHER ORDERED that any oppositions to confirmation of the  
23 arbitration award must be filed no later than April 11, 2011.

24       IT IS FURTHER ORDERED that any replies in support of confirmation of the  
25 arbitration award must be filed no later than April 26, 2011.

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1 IT IS FURTHER ORDERED that Motion to Strike the Opposition to Motion for  
2 Allocation and Suggestions in Support (Doc. #731) is hereby DENIED.

3 IT IS FURTHER ORDERED that Ex Parte Motion to File Under Seal, for In  
4 Camera Review, Notice of Opinion and Order Issued by Honorable Layn R. Phillips (Doc.  
5 #732) is hereby DENIED.

6 IT IS FURTHER ORDERED that Motion for Hearing (Doc. #735) is hereby  
7 DENIED.

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9 DATED: March 14, 2011

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12 PHILIP M. PRO  
United States District Judge

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